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BOARD OF PHARMACY

STATE OF NEW JERSEY
DEPARTMENT OF LAW & PUBLIC SAFETY
DIVISION OF CONSUMER AFFAIRS
STATE BOARD OF PHARMACY

IN THE MATTER OF THE SUSPENSION	:	Administrative Action
OR REVOCATION OF THE LICENSE OF	:	
	:	FINAL DECISION AND ORDER
RONALD SORR, RPh.,	:	
	:	
TO PRACTICE PHARMACY IN THE	:	
STATE OF NEW JERSEY	:	

This matter commenced with the filing of a complaint by the Attorney General of New Jersey against the respondent Ronald C. Sorr, R.P. on August 29, 2005. The complaint alleged that from at least June 2002 through September 2002, respondent dispensed from Trenton Avenue Pharmacy Novartis drug samples for approximately one hundred four (104) purported patients pursuant to New Jersey Prescription blanks (NJPBs), with Novartis vouchers attached (ensuring no charge to the patient). All of the 104 NJPBs in question were presented to the respondent, in bulk, at Trenton Avenue Pharmacy by a Novartis pharmaceutical sales representative. The sample medications listed on the prescriptions included the following prescription legend drugs: Diovan HTC, Elidel, Exelon, Famvir, Lamisil, and Starlix. Respondent, after filling the

prescriptions on different occasions, either gave the medications directly to the pharmaceutical representative, or mailed the dispensed medications, as directed by the sales representative, to an authorized prescriber who in fact was not the prescriber for any of the 104 patients. Respondent at no time contacted any patient or any prescriber who allegedly signed the prescription blanks to verify the validity of any of the prescriptions. Respondent never counseled any patient, never offered to counsel any patient, never completed patient records as to the patient's phone number or gender, and never questioned that the prescriptions were not delivered by patients or their representatives, nor picked up by patients or their representatives. Respondent was reimbursed for his cost of the drugs he dispensed and compensated with a dispensing fee for each of the filled prescriptions. All of the prescriptions were fraudulent.

Based upon those alleged facts, complainant charged respondent with dishonesty, fraud, deception, misrepresentation, false promise or false pretense in violation of N.J.S.A. 45:1-21(b); gross negligence, repeated acts of negligence, lack of professional judgment, in violation of N.J.S.A. 45:1-21(c) and (d); failure to conduct a prospective drug review, failure to counsel and failure to offer to counsel, in violation of N.J.S.A. 45:14-15.1 and 15.2; failure to record information in the patient profile records, in violation of N.J.S.A. 45:14-15.3; failure to place

initials on the face of the original prescriptions, in violation of N.J.A.C. 13:39-5.6(a), professional misconduct in violation of N.J.S.A. 45:1-21(e), and failure to comply with statutes and regulations relating to the practice of pharmacy in violation of N.J.S.A. 45:1-21(h) for which Ronald Sorr, individually and as owner of Trenton Avenue Pharmacy is liable per N.J.S.A. 45:14-16.1.¹ Respondent filed an answer on September 5, 2005 in which he essentially denied the allegations of the complaint.

The matter was transferred to the Office of Administrative Law on December 21, 2005. On December 21, 2005, complainant moved for, and the Honorable Donald J. Stein, A.L.J. granted, partial summary decision in favor of the complainant on Counts I, II, III and IV of the Complaint, and ordered that the matter proceed to the penalty phase. ALJ Stein found however, that material issues of fact exist as to whether respondent failed to place his initials on the face of the prescriptions, and whether respondent failed to conduct a prospective drug utilization review. Judge Stein found the counts on which summary decision was granted to be the more significant and that litigation of these two issues would have no impact on the penalty phase. On December 4, 2006

¹ Complainant has framed the complaint based on conduct that occurred in 2002, citing to statutes and regulations (other than those included in the Uniform Enforcement Act, N.J.S.A. 45:1-14 et seq.) that were later repealed and re-codified in 2003, 2004 and 2005. However, all of the violations cited are included in the re-codified statutes and regulations regulating the practice of pharmacy in New Jersey.

respondent filed exceptions with the Board and complainant filed a response to those exceptions on December 16, 2006.

On April 25, 2007 both counsel were afforded an opportunity to present oral argument on the exceptions before the Board. Stephen Funk, Esq., of Jacobs & Barbone, P.A. appeared and argued on behalf of Respondent Sorr. Deputy Attorney General Megan Cordoma appeared for the Attorney General of New Jersey. A hearing at which respondent was afforded an opportunity to present written and testimonial evidence in mitigation of penalty was also held before the Board on April 25, 2007.

After due consideration of the Administrative Law Judge's partial summary decision and the underlying record in this case, the Board adopts as its final decision the Initial Decision including the Findings of Fact, as set forth in the ALJ's factual discussion of the stipulated facts, and the Conclusions of Law.

Counsel for respondent, in his exceptions, speculates that the ALJ has misconstrued the reimbursement to Sorr, and further speculates that based on this mathematical error, the ALJ attributed monetary motivation as the backbone of his determination of respondent's liability. The Board disagrees. In paragraph 11 of the Stipulation of Facts, it is clearly stated that respondent received reimbursement covering the cost of the drug already incurred by the respondent and, in addition, a dispensing fee for each prescription dispensed. Moreover, there is no reference by

Judge Stein to profit in the decision. Rather, the ALJ attributes the liability of respondent to "...turning a blind eye," ignoring the standard of care mandated by the statutes, regulations and the body of ethics to be adhered to by those in the profession, and placing the public at risk by dispensing the drugs to an unknown end-user, placing the medications into the stream of commerce without consideration as to the potential harm to a member of the public.

Respondent submits that an evidentiary proceeding should have been held, that respondent did not have the requisite intent required to commit fraud. Rather, counsel asserts the Board should find that respondent was reasonable in his reliance on the bare representation of the sales representative of a pharmaceutical company that the prescriptions were valid.

The Board relies on its own expertise after reviewing the photocopied NJPBs attached in Exhibit J-1 Stipulation of Facts, in addition to the expert opinion of Donna Horn, R.Ph. Respondent should have taken note of the remarkable similarity of the handwriting on the face of the prescriptions supposedly written by different prescribers; the unusual distance between the practitioners' offices and the patients' homes from the Trenton Avenue Pharmacy; the bundled presentation of prescriptions; the oddity that so many patients were concurrently suffering from identical conditions, all covered by the specific Novartis

products. Indeed, this repeated "...turning a blind eye" goes to the very heart of the pharmacist's duty to exercise professional judgment, to ensure that a prescription is valid and not fraudulent, and that the patient for whom the prescription is written will receive the prescribed medication for a valid medical purpose. Instead, Ronald Sorr ignored all the hallmarks of dishonesty, misrepresentation or fraud and blindly dispensed each prescription when he either knew or should have known to question their validity. By doing so, Ronald Sorr put drugs into the stream of commerce that he knew or should have known were not going to a valid patient and that unaccounted for, may be used by unauthorized individuals for consumption or sold through unlawful channels to an unsuspecting member of the public. Respondent's continued failure to comply with the standard of care has put patients and the general public at real and potential risk.

Respondent does not contest that he failed to adhere to the statutory and regulatory requirements to complete patient record information as to gender and phone number. Nor does respondent represent that he counseled as to combinations of medication which were contraindicated or offered to counsel any of the fictitious patients verbally or in writing, all mandatory requirements. Rather, respondent contends that he relied on the veracity of Nanna, the sales representative, and that he was "duped" and could not have foreseen that Nanna could have engaged

in a fraudulent act such as theft of a practitioner's NJPB pad and thereafter created fraudulent scripts. However, in an attempt to demonstrate that Nanna was not credible, respondent cross-examined Nanna under oath during the penalty phase. Nanna controverted every representation made by respondent throughout these proceedings. The Board found his testimony to be replete with misrepresentations and now is hard-pressed to understand why respondent, given the questionable circumstances surrounding the presentation of the prescriptions, as well as the suspect nature of the prescriptions, would rely on Nanna as respondent so ably demonstrated in front of the Board, was not credible.

In considering the penalty to be imposed in this matter, the Board afforded respondent the opportunity to present mitigating circumstances and the State the opportunity to respond. The State submitted in S-1 a Certification of Costs accompanied by exhibits setting forth investigatory costs, the amount charged for the State's expert report, and a detailed bill for attorney's fees on behalf of the State.

Respondent presented only the testimony of Nanna, the sales representative, although Mr. Sorr was in attendance at the proceeding. Counsel for Mr. Sorr confined his oral argument to urging the Board to consider past cases which counsel deemed to involve more egregious conduct than that of respondent.

This Board has found that Mr. Sorr has demonstrated

reckless disregard in dispensing all of the multiple prescriptions contained within the subject 104 New Jersey Prescription Blanks that were presented to him under highly suspicious circumstances. The State has argued that should respondent escape significant discipline for putting the public at risk by allowing these drugs to enter into the public domain, the public's confidence in the profession of pharmacy will be undermined. The Board agrees.

Therefore, in order to impose a penalty in accord with the seriousness of the findings in this matter, the Board has determined to order a five (5) year suspension of the license to practice pharmacy of Ronald Sorr. The first two years of that suspension shall commence sixty (60) days from the date of the filing and service of this order, to allow respondent a reasonable amount of time to hire a Pharmacist-in-Charge for the continued operation of Trenton Avenue Pharmacy.

The Board has conducted a detailed review of the State's submission, S-1, Certification of Costs and Exhibits. Respondent objected to the amounts characterizing them as "over-inflated" and "outrageous," and specifically objecting to the attorney fees charged by the State. The Board has determined that the attorney fees do contain some overlap of time spent, given that on occasion the Board was billed for two deputies to accomplish one task. While the complexity of the task may well have necessitated the participation of more than one attorney, the Board has determined

on this one point, to adjust the attorney's fees. However, it is noted that no other specific objection was made by respondent. We find that the fees per hour charged were reasonable and submissions on attorney's fees sufficiently and adequately document the manner in which counsel's time was spent in this matter, and find the overall time spent is reasonable in view of its seriousness. We additionally point out the important interests furthered by pursuit of this matter - most significantly the paramount interest in protecting the public from practitioners such as respondent, who would fill bulk prescriptions, including a number of medications which involve potentially hazardous combinations of drugs, without knowing the recipients, without providing counseling, without verification of any prescriptions, and by delivery to a sales representative. In short, this matter involves a most vital role of this Board, to protect the public from a practitioner who must have known he dispensed multiple prescriptions which were not issued for a legitimate purpose and posed dangers to the public.

THEREFORE IT IS ON THIS 18th DAY OF JUNE, 2007

ORDERED:

1. That the license of Ronald Sorr, R.P. to practice pharmacy in the State of New Jersey is hereby suspended for a period of five years, the first two years to be an active suspension, commencing sixty days following the date of filing and service of this Order. During the active suspension period

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respondent shall not handle or order inventory, compound, count, fill, refill or dispense any drug. He shall not handle anything requiring a prescription, including devices and medications, and he shall not handle prescriptions. Respondent shall not advise or consult with patients, and he is prohibited from being present within the prescription filling area of any pharmacy.

2. During the last three years of the suspension, all of which shall be stayed and served as probation, respondent shall not be permitted to be a preceptor or a pharmacist-in-charge.

3. Prior to any reinstatement of license, respondent shall submit a passing grade for the Multi-state Jurisprudence Examination (MJPE) for an exam taken in the last ninety (90) days of the active suspension period.

4. Respondent is ordered to pay attorney's fees and costs to the State of \$99,639.75 and a civil penalty of \$10,000 inclusive of all four counts on which Partial Summary Decision was granted. All monies will be due and owing within ten business days of the filing and service of the final written order by means of a certified check or money order payable to the State of New Jersey and submitted to the Board office. All monetary penalties and costs shall be paid prior to reinstatement of license and commencement of the probationary period.

5. Respondent is to surrender his original wall certificate, his wallet certificate and the most recent renewal

card of his license to an authorized representative of the Board of Pharmacy within ten days of the date of this Order.

STATE BOARD OF PHARMACY

By: Edward G. McGinley
Edward G. McGinley, R.Ph.
President